

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.501 of 2018(O&M)
Date of decision: 23.09.2019

Mohinder Singh and others

... Appellants

Versus

Roor Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ranjit Sharma, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 02.12.2015, whereas the counter-claim preferred by the appellants/defendants was dismissed. For even the appeal preferred by the appellants against the said decree failed and was dismissed on 05.12.2016, they are before this Court in Regular Second Appeal. Parties to the lis hereinafter shall be referred to by their original positions in the suit.

Respondent Roor Singh prayed for a decree for permanent injunction restraining the defendants from causing any interference in his peaceful possession over house measuring 11.6 marlas, which is bounded as under:

“ East : House of Lakhbir Singh
West : House of Mohinder Singh
North : Passage
South: Passage

Situated within the Lal Lakeer of Abadi of Village
Ranjan, Tehsil Ajnala, District Amritsar.”

In brief, the case set out by the plaintiff was that he was owner in possession of the suit property comprised of four rooms, verandah, kitchen, boundary wall, and since the defendants intended to forcibly dispossess the plaintiff, thus, the suit.

In defence, it was pleaded by the defendants that the plaintiff had in fact forcibly trespassed into the suit property, for he was neither the owner nor in lawful possession. However, after over a year of filing of the written statement, the defendants filed a counter-claim pleading *inter alia* that the suit property originally belonged to Joginder Singh Chela of Surta Singh of Gurudwara Sahib, situated at Village Ranjan, who by virtue of a registered Will dated 05.03.1990, bequeathed the suit property in their favour. In fact, post death of Joginder Singh on 16.01.1992, the plaintiff forcibly entered into the possession of the suit property on 14.12.2011 and, thus, the defendants were entitled to possession of the suit property on the basis of the title.

In reply to counter-claim, the plaintiff denied the validity and execution of the Will propounded by the defendants and prayed for its dismissal.

Upon a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that Will propounded by the defendants remained unproved as they failed to examine any of the attesting witnesses thereto. Even otherwise, only a photocopy of the said Will was brought on record as Mark 'A' and no permission was sought either by the defendants to prove their title even by way of secondary evidence. As regards possession: this was rather the case of the defendants themselves that plaintiff was possession though he had unauthorizedly occupied the suit

property. That being so, the plaintiff could not be denied the injunction prayed for.

The argument advanced by learned counsel for the appellants that even the plaintiff set up a title in himself, but he too failed to lead any evidence to prove his ownership, lacks conviction. For all what the plaintiff prayed for was an injunction simplicitor and once he was conceded to be in possession, he was entitled to injunction. On being pointedly asked, learned counsel for the appellants failed to refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

23.09.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO